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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. CHRISTOPHER R. HELM, Defendant and Appellant.	A144595 (Marin County Super. Ct. No. SC174724A)

Christopher R. Helm (appellant) appeals from the trial court's denial of his petition under Proposition 47[1] to have one of his prior felony convictions reclassified as a misdemeanor conviction. He contends the court erred in finding he had not met his burden of establishing eligibility for resentencing. We reject the contention and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

On March 16, 2011, a felony complaint was filed charging appellant with auto burglary (Pen. Code, § 459[2]; count 1), two counts of receiving stolen property (§ 496, subd. (a); counts 2 & 3), and misdemeanor possession of burglar tools (§ 466; count 4).

[1]Proposition 47 made certain drug-and theft-related offenses misdemeanors, and also created a resentencing provision, Penal Code, section 1170.18, under which "[a] person currently serving a sentence for a conviction . . . of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section ('this act') had this act been in effect at the time of the offense may petition for a recall of sentence" and request resentencing. (Pen. Code, § 1170.18, subd. (a).)

[2]All further statutory references are to the Penal Code unless otherwise stated.

The complaint further alleged appellant had suffered two prior felony convictions (§ 1203, subd. (e)(4)).

The complaint was based on an incident that occurred on March 14, 2011. According to the probation officer's summary, a report went out that day that a burglary had just occurred near Tamalpais High School, and that a black pick-up truck with two occupants was seen in the area of the burglary. Shortly thereafter, Mill Valley police officers located the truck and detained two suspects—appellant and Jason Vigil. Appellant was the registered owner of the truck. Officers approached and noticed several items in plain view scattered throughout the truck, including a brown folding wallet, a check book with a victim's name on the front of the checks, and a brown leather purse. A pink cell phone was also found in the truck. The victim identified the truck as belonging to the people who had taken her purse and confirmed that the various items found in the truck, including her purse, wallet, check book, and cell phone, were hers.

A further search of the truck revealed two hand held walkie talkie radios, black leather gloves, screw drivers, a window breaking tool, mail and bank information belonging to various individuals from different cities, and an address book containing six names and their personal information. The property, all of which belonged to different individuals, included Wells Fargo and Charles Schwab bank statements, a Fidelity investments statement, blank checks from Citibank and Discover linked to credit card accounts, checks made out to various individuals, a California registration sticker, a disabled person parking placard, a utilities bill, a General Electric money card application, and a check transaction book. Of the victims contacted, none had given permission to anyone to have their personal property. One victim said he had unauthorized charges on his credit card in the amount of $750. Another victim said she had to cancel her credit card after learning she was a victim of fraud and had made a police report with Redwood City Police Department. Another victim said his vehicle had been burglarized in February 2011 and that his disabled person parking placard along with other personal items had been removed. Thirteen of the victims lived outside Marin County, and the investigation was turned over to the United States Postal Inspector.

Officers searched appellant and found a check from US Bank in the amount of $304.04, dated February 14, 2011, made out to a second victim, and endorsed by Vigil. That victim said he was unaware he had been issued a check in the amount of $304.04. A $1,000 unendorsed check from a third victim, made out to appellant, was also found. That victim said he had written a $1,000 check to his daughter on March 3, 2011, and had mailed it to her; she had not received the check. When investigators checked the truck's GPS navigator, it showed that appellant and Vigil had tried to navigate to the first victim's home after taking her purse, cell phone, and other property. Further investigation showed that appellant and Vigil had used her credit card to get gas at a Chevron gas station.

Deputies interviewed appellant at the Marin County Jail. Appellant said he picked Vigil up early in the morning of March 14, 2011, and went to Mill Valley. When appellant told Vigil that he did not have much gas, Vigil told him to pull over, and got out of the truck. Appellant initially claimed he did not see Vigil do anything, and that he only knew "a purse was in the truck" when Vigil returned. Later, he admitted he acted as the "look out" as he told Vigil that there was a purse inside a BMW car. Vigil "did his thing," using a metal tool to shatter the BMW car window. Vigil gave appellant a credit card and they used that card to obtain gas from a Chevron gas station.

Appellant also told deputies that he and Vigil were involved in a second auto burglary that day, when "a bag was taken from a second vehicle that was broken into."[3] Appellant did not say he took the bag out of the vehicle, but was able to tell the deputies where the bag was located. Appellant went on to tell the deputies that he had been out of work and was using drugs; his preferred drug was methamphetamine. He and Vigil needed money and had burglarized vehicles "no more than five times," in Mill Valley, Novato, and Richmond. They would share the cash found in the vehicles and would use the credit cards for gas. He said he was "high" at the time of the burglaries.

[3]The victim of the second auto burglary said she parked her car at approximately 8:00 a.m. on March 14, 2011. When she returned to the car, the front door window had been broken and a bag or backpack had been taken.

On April 21, 2011, appellant pleaded guilty to counts 1 and 2 pursuant to a negotiated disposition. The trial court imposed a state prison term of two years eight months, suspended execution of sentence, and placed appellant on probation for three years.

On September 4, 2012, the probation department petitioned to revoke appellant's probation. The trial court summarily revoked his probation and issued a bench warrant. On December 5, 2013, appellant admitted violating the terms and conditions of probation, and the court revoked his probation and imposed the suspended prison sentence of two years eight months.

On December 22, 2014, appellant petitioned the trial court under Proposition 47 for resentencing of his prior conviction for receipt of stolen property (§ 496, subd. (a), count 2). After hearing argument from the parties and taking the matter under submission, the court denied the petition, stating: ". . . I think that the documents filed by Mr. Helm pass what everyone seems to be referring to as the eligibility screening stage of 1170.18. So I disagree with the People's position that in the pleading stage that the petition filed by . . . Mr. Helm . . . has to pass any type of evidentiary muster, or that the defendant has the burden of proving on a 496 case, for example, that the value of the property was $950 or less. . . . [¶] I think that the defendant passes the eligibility screening with the type of filing that was made in this case. In the Court's own review I'm finding no disqualifying priors. For example, the 290 registration, or a super strike. [¶] So I think we are properly at the next stage of the process in 1170.18 cases which is what everyone seems to want to call the qualification hearing. That's what we've been engaged in."

The court continued: "I'm finding that at the qualification hearing, . . . Mr. Helm . . . has the burden of proving that the value of the property related to the 496 offense, for which he was convicted as a felony, was $950 or less. . . . [¶] There is nothing in the record of conviction to suggest the value of the property at issue is less than or equal to $950. [¶] The defendant I think in his papers, either directly or certainly by inference, admits that there is nothing certain in the record of conviction to establish the value of the

items listed in the complaint, and that the value of those items . . . could be below or above $950, it's just not clear. [¶] Under those circumstances, . . . I don't think the defendant has met his burden of showing that the value of the property at issue is $950 or less. [¶] I'm not accepting, I think the defendant had a proper objection of not accepting [the prosecution's] recitations, as to the value of the property. I think those things are hearsay. So really what the Court is left with is no evidence at all, one way or the other, to establish the value of the items. And in the Court's perspective, therefore, the defendant has not met his burden of proving that the value of the items is $950 or less. So I'm going to deny his request for resentencing because at this point there would be no need to resentence the defendant because his 496 conviction will remain a felony. . . . So the motion is denied."

DISCUSSION

Appellant contends the court erred in finding he had not met his burden of establishing eligibility for resentencing. We disagree.

On November 4, 2014, voters enacted Proposition 47, and it went into effect the next day. (Cal. Const., art. II, § 10, subd. (a).) "Proposition 47 makes certain drug-and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors)." (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) "Proposition 47 also created a new resentencing provision: section 1170.18. Under section 1170.18, a person 'currently serving' a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47." (*Id*. at p. 1092.)

As relevant here, Proposition 47 amended section 496, subdivision (a), which formerly provided that receiving stolen property with a value that did not exceed $950 was a "wobbler," punishable either as a felony or misdemeanor. (Former Pen. Code, § 496, subd. (a).) As amended, section 496, subdivision (a), now provides that a

violation of this offense is a misdemeanor if the value of the property is less than $950 and the defendant "has no prior convictions" for an offense specified in section 667, subdivision (e)(2)(C)(iv)—which lists serious and violent felonies that are sometimes referred to as "'super strike' offenses"—or for an offense that requires the defendant to register as a sex offender under section 290, subdivision (c). Thus, Proposition 47 requires a misdemeanor sentence instead of a felony sentence for a violation of section 496, subdivision (a), when the amount involved is $950 or less, unless one of the above specified exceptions applies. (See, e.g., *People v. Perkins* (2016) 244 Cal.App.4th 129, 136.)

"Upon receiving a petition under subdivision (a), the [trial] court shall determine whether the petitioner satisfies the criteria for subdivision (a)." (§ 1170.18, subd. (b).) The defendant seeking resentencing under Proposition 47 has the burden of establishing "the facts, upon which his . . . eligibility is based." (*People v. Sherow* (2015) 239 Cal.App.4th 875, 879–880 [the defendant had the burden of establishing that the value of the items stolen did not exceed $950]; *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449 [same]; *People v. Perkins*, *supra*, 244 Cal.App.4th at p. 136 [same].)

Appellant did not meet his burden in this case. Count 2 of the complaint alleged that appellant and Vigil "did willfully and unlawfully buy, receive, conceal, sell, withhold, and aid in concealing, selling, and withholding property, to wit: a purse, a wallet, credit card, a cell phone and mail belonging to [twelve named individuals], and personal identifying information belonging to [nine named individuals], which had been stolen and obtained by extortion, knowing that said property had been stolen and obtained by extortion." Appellant argued that the "two stolen checks found in [his] possession" had only nominal value, but did not address the value of the mail and personal identifying information belonging to a total of 21 individuals. As to the purse, wallet, credit card, and cell phone that was stolen from the victim, appellant essentially stated it was impossible to determine their value, stating, "Given the fact that in our consumer society the value of items such as . . . purses, wallets, and cell phones can range from a few

dollars to a few thousand dollars, their value in the present case was and is ambiguous." He did not describe the stolen purse, wallet, or cell phone, and did not discuss the value of the credit card that was stolen. He therefore provided no information regarding the nature and value of those items. We conclude appellant did not meet his burden of providing evidence to establish that he was eligible for resentencing on his stolen property conviction.[4]

DISPOSITION

The order denying appellant's petition for recall and resentencing is affirmed.

[4]Appellant also complains the trial court should have "permit[ted] a further hearing on the required factual determination of whether the property was valued at $950 or less." He did not, however, request a further hearing, and he has cited no authority to support his position that the court was, sua sponte, required to conduct a hearing, where appellant had already been given an opportunity to present evidence, and failed to do so.

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McGuiness, P.J.

We concur:

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Pollak, J.

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Siggins, J.

A144595; *People v. Helm*